

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 DHA-02 CIAE-00 PM-04 H-01 INR-07

L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 2295

DEPT OF JUSTICE WASHDC PRIORITY

INFO CSAF JACI

CINCPAC

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13AF CLARK

3CSG CLARK

C O N F I D E N T I A L MANILA 10772

DEPT JUSTICE FOR FOREIGN LITIGATION UNIT

E.O. 11652: GDS

TAGS: MILI, SHUM, RP

SUBJECT: DFA PROTEST RE U.S. MILITARY POSITION ON NUGUID CIVIL SUIT

REF: MANILA 10738, DTG R 130851Z JUL 77

DEPARTMENT OF FOREIGN AFFAIRS NOTE NO. 2044-77, DATED JULY 12, 1977, MARKED "CONFIDENTIAL AND VERY URGENT" DELIVERED TO EMBASSY ON JULY 13, 1977. DRAFT REPLY AND COMMENT FOLLOWS SEPTEL. TEXT OF NOTE READS AS FOLLOWS:

QUOTE...USUAL OPENING...HAS THE HONOR TO REFER TO A NEWS ITEMS UNDER THE HEADING OF "CLARK REJECTS SUMMONSES ON 3 SERVICEMEN" WHICH APPEARED ON THE FRONT PAGE OF THE TIMES JOURNAL OF 11 JULY 1977. THE NEWS ITEMS STATES: "CLARK AIR BASE AUTHORITIES REJECTED THE SUMMONSES ISSUED BY THE COURT OF FIRST INSTANCE HERE ON 3 AMERICAN SERVICEMENT WHO HAVE BEEN CONFIDENTIAL

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CHARGED IN A CIVIL CASE IN CONNECTION WITH THE DOG-BITING INCIDENT INVOLVING A FILIPINO SCAVENGER ... IN REFUSING TO ACCEPT THE SUMMONS, BASE OFFICIALS SUGGESTED IN A LETTER TO (JUDGE) SAMSON THAT SUCH ACTION SHOULD BE COURSED THROUGH DIPLOMATIC CHANNELS. BASE AUTHORITIES SAID THAT 'IN LEGAL EFFECT, THE SUBJECTS ARE NOT THE PROPER PARTY DEFENDANTS, AND

WE ARE WITHOUT AUTHORITY TO ACCEPT SERVICE IN BEHALF OF THE U.S. GOVERNMENT."

AS REPORTED, THE ATTITUDE OF THE BASE AUTHORITIES RUNS COUNTER TO THE RP-US MILITARY BASES AGREEMENT, ARTICLE XIII, PARAGRAPH 8 OF WHICH PROVIDES: "IN EVERY CASE IN WHICH JURISDICTION OVER AN OFFENSE IS EXERCISED BY THE UNITED STATES, THE OFFENDED PARTY MAY INSTITUTE A SEPARATE CIVIL ACTION AGAINST THE OFFENDER IN THE PROPER COURT OF THE PHILIPPINES TO ENFORCE THE CIVIL LIABILITY WHICH UNDER THE LAWS OF THE PHILIPPINES MAY ARISE FROM THE OFFENSE." FURTHER, THE AGREEMENT PROVIDES IN ARTICLE XIV, PARAGRAPH 1: "NO...PROCESS, CIVIL OR CRIMINAL, SHALL BE SERVED WITHIN ANY BASE EXCEPT WITH THE PERMISSION OF THE COMMANDERING OFFICER OF SUCH BASE; BUT SHOULD THE COMMANDING OFFICER REFUSE TO GRANT SUCH PERMISSION HE SHALL ... FORTHWITH TAKE THE NECESSARY STEPS .. TO SERVE SUCH PROCESS, ... AND TO PROVIDE THE ATTENDANCE OF THE SERVER OF SUCH PROCESS BEFORE THE APPROPRIATE COURT IN THE PHILIPPINES OR PROCURE SUCH SERVER TO MAKE THE NECESSARY AFFIDAVIT OR DECLARATION TO PROVE SUCH SERVICE AS THE CASE MAY REQUIRE."

IT IS EVIDENT UNDER THESE PROVISIONS THAT THE BASE COMMANDING OFFICER IS OBLIGED TO COOPERATE IN THE SERVICE OF A CIVIL PROCESS WITHIN THE BASE, SUCH AS IS INVOLVED IN THE INSTANT CASE. THE SUGGESTION
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THAT THE SERVICE OF CIVIL PROCESS SHOULD BE COURSED THROUGH DIPLOMATIC CHANNELS IS WANTING IN LEGAL SUPPORT. FOR NOTHING IN THE MILITARY BASES AGREEMENT, IN THE EXCHANGE OF NOTES BETWEEN THE PHILIPPINE GOVERNMENT AND THE UNITED STATES GOVERNMENT IN 1965, THE ANNEX TO THE PHILIPPINE NOTE, THE ATTACHED AGREED OFFICIAL MINUTES AND AGREED IMPLEMENTING ARRANGEMENTS FOR THE PROVISIONS OF ARTICLE XIII, SUPPORTS OR EVEN IMPLIES THE REPORTED POSITION TAKEN BY THE BASE OFFICIALS. THE CASE UNDER DISCUSSION IS A PERSONAL CIVIL SUIT FOR DAMAGES, ARISING FROM ACTS AMOUNTING TO TORTS. IT IS IN THE NATURE OF SUCH OTHER CIVIL ACTIONS AS THOSE FOR COLLECTION OF UNPAID RENTALS ON AN APARTMENT HYPOTHETICALLY LEASED BY AN AMERICAN SERVICE-MAN OUTSIDE THE BASE. OR TO TAKE ANOTHER EXAMPLE, THE INSTANT CASE IS ON THE LEVEL OF A CIVIL ACTION FOR SUPPORT HYPOTHETICALLY FILED BY A FILIPINA MARRIED TO AN AMERICAN SERVICEMAN WHO HAS ABANDONED HER. IN ALL THESE AND ANALOGOUS CASES, SERVICE OF CIVIL PROCESS IS COURSED ONLY THROUGH THE BASE COMMANDING OFFICER AND NOT THROUGH DIPLOMATIC CHANNELS, PURSUANT TO LEGAL AUTHORITY AND STANDARD PROCEDURE.

IF THE REPORTED ACTION OF THE BASE OFFICIALS
IN REFUSING TO ACCEPT THE SUMMONS IS TRUE, THAT
WOULD BE TANTAMOUNT TO IGNORING THE OBLIGATION OF
THE UNITED STATES GOVERNMENT UNDER THE MILITARY BASES
AGREEMENT AND, ACCORDINGLY, THE DEPARTMENT WOULD LIKE
TO PROTEST SUCH ACTION. THE INTERESTS OF BOTH THE
PHILIPPINE GOVERNMENT AND THE UNITED STATES GOVERNMENT
CANNOT BE SERVICED BY NEGATING THE PERTINENT PROVISIONS
OF THE AGREEMENT

COMPLEMENTARY CLOSE...END QUOTE
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